

EMILY B. HUNT (ON RECONSIDERATION)

IBLA 76-90

Decided June 8, 1982

Petition for reconsideration of Board decision that affirmed a decision of the Alaska State Office of the Bureau of Land Management rejecting in part Alaska Native allotment application F-16376.

Petition for reconsideration granted; prior Board decision, Emily B. Hunt, 23 IBLA 205 (1976), and decision appealed from vacated; case remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve -- Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

APPEARANCES: John Scott Evans, Esq., Name, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

By decision of January 6, 1976, styled Emily B. Hunt, 23 IBLA 205 (1976), this Board affirmed a decision of the Alaska State Office, Bureau of

Land Management (BLM), dated June 18, 1975, which approved in part and rejected in part Hunt's Native allotment application, F-16376, dated January 12, 1971, and filed pursuant to the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). Hunt has petitioned the Board to reconsider its earlier decision. We grant the petition in order to review the case in light of section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, 94 Stat. 2371, 2435 (1980).

[1] BLM rejected appellant's application because it found the evidence insufficient to show that she had used the entire parcel applied for in her allotment application for a minimum of 5 years in a manner potentially exclusive of all others. If, however, appellant qualifies under the provisions of ANILCA, supra, BLM's decision is rendered moot, of no legal consequence. Section 905(a)(1) of ANILCA states:

Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve -- Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

The named paragraphs containing exceptions to section 905(a)(1) describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, supra. For example, automatic approval of an application is barred if on or before the 180th day following the effective date of the Act "[a] person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity." Section 905(a)(5)(C). Also, adjudication is necessary where the land is valuable for certain minerals other than oil, gas, or coal; or the application describes land in a previously established unit of the national park system; or in a state selection, but where the allotment is not within the core township of a Native village.

The basis of BLM's decision to reject appellant's application, in part, insufficient use and occupation of the entire area of the land applied for, must be deemed irrelevant under subsection 905(a)(1), ANILCA, supra, so long

as appellant qualifies thereunder. 1/ BLM must now determine whether the requirements of ANILCA have been met in this case, and then take the appropriate action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we vacate the decision appealed from and our decision in Emily B. Hunt, supra, and remand the case to BLM for further action consistent with this opinion.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. FRAZIER
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ The requirement that an application be pending before the Department on Dec. 18, 1971, must be met regardless of whether the application is approved under section 905(a)(1) of the Alaska National Interest Lands Conservation Act or the Alaska Native Allotment Act, because the Native Allotment Act was repealed on that date and no application could be approved thereunder unless it was pending before the Department of the Interior on Dec. 18, 1971. 43 U.S.C. § 1617(a) (1976). Although Hunt's application was dated Jan. 12, 1971, it was not filed with the BLM until Mar. 23, 1972, when the Bureau of Indian Affairs (BIA) filed it on her behalf. It appears that many Native allotment applicants had filed their applications or evidence with the BIA prior to Dec. 18, 1971, but BIA held them past the time when they were required to be filed with the BLM. Such applications are deemed to be pending on Dec. 18, 1971. See, e.g., Julius F. Pleasant, 5 IBLA 171 (1972).

